

FEEDER PIG SALE AND PURCHASES AGREEMENT

THIS AGREEMENT for the sale and purchase of feeder pigs is entered into as of this day of _____ 1998 by and between _____ (Buyer), and TRI COUNTY TRANSPORT (Seller).

WITNESSETH

WHEREAS, SELLER, is engaged in the production and sale of FEEDER Pigs and will be capable of producing Feeder Pigs in the numbers specified by BUYER.

THEREFORE, to further the above premises, and in consideration of the promises and covenants made hereafter, the Parties agree as follows:

1. Sale and Purchase of Feeder Pigs:

During the term of this Agreement, SELLER agrees to sell to BUYER, and BUYER agrees to purchase from SELLER _____ Feeder Pigs +/- 10% (the "Agreed Quantity") every _____, to be picked up at SELLER'S facilities by TRI COUNTY TRANSPORT's truck(s) for delivery to BUYER'S destination (each truckload of Feeder Pigs shall hereafter be referred to as a "LOT").

Qualified Feeder Pigs - shall mean the Feeder Pigs that conform to the following:

- A. Sellable at an age of 68 to 80 days weighing forty (40) pounds average per head or more.
- B. Free of the defects and produced in accordance with warranties in Section 9 and the protocol listed in Section 10.

Non-qualifying Feeder pigs - shall mean all Feeder Pigs that do not conform to the requirements of a Qualified Feeder Pig. Determination of qualifying / non-qualifying pigs will be done at BUYER'S destination.

2. TERMS OF AGREEMENT.

This Agreement shall commence on DECEMBER 21st, 1998, and continue for an initial term of TEN (10) YEARS thereafter. At the end of such initial term, this Agreement shall automatically renew for an additional FIVE (5) years term upon the same terms and conditions contained herein, unless either party shall give to the other written notice of its intent to terminate, which notice shall be given at least one hundred and twenty (120) days in advance of the end of the termination of such initial term.

3. PAYMENT.

BUYER shall pay SELLER the invoiced amount calculated in accordance with this Agreement within two (2) business days of receipt of said invoice by placing a check in the US mail, or will be picked up by seller upon delivery.

4. FEEDER PIG PRICE.

The Feeder Pig price per head for Qualified Feeder Pigs shall be:

CME lean hog futures at then close of the last day of business of the week prior to the delivery day for the (4) four-month price multiplied by one hundred eighty-five (185) pounds (carcass weight) multiplied by forty-six percent (46%). When four-month CME lean futures price is not available, the average of 3rd and 5th month will be used to establish the CME lean hog futures price. This price per head for qualified feeder pigs is subject to a minimum price of forty-seven dollars and fifty cents (\$47.50) per head and a maximum price of sixty-three dollars (\$63) per head. All feeder pigs will be priced on a 50 pound base weight. \$.35 per pound over 50 pounds to 60 pounds and \$.25 per pound for weight over 60 pounds. Pigs weighing under the 50 pound base weight will be a \$.35 per pound deduction.

5. WEIGHING CONDITIONS.

All lots of feeders Pigs picked up hereunder shall be weighed within 20 miles of Nursery. This weight will be the SALE WEIGHT.

6. DELIVERY.

It is agreed that delivery of any Feeder Pigs to BUYER hereunder shall occur, as such Feeder Pigs are loaded upon TRI COUNTY TRANSPORT's truck(s). BUYER shall be responsible for all the transportation charges, to be charged at the rate of \$2.35 per loaded mile not to exceed \$1.00 per head, with a minimum of \$300 per load, in relation to the Feeder Pigs purchases hereunder, except that SELLER shall:

- A. Provide all health permits necessary to qualify the pigs for interstate shipment; and
B. Prior to delivery, all pigs will be in accordance with all applicable rules in order to allow interstate shipments to the states to which the Feeder Pigs are being shipped.

7. TITLE TRANSFER OF FEEDER PIGS.

Title of the Feeder Pigs shall pass from SELLER to BUYER upon payment of invoice. Determination of qualifying / non-qualifying pigs will be done at BUYER'S destination. All Feeder Pigs not paid for will remain the property of the seller. Seller has 48 hours to remove reject pigs.

8. SELLER'S FAILURE TO DELIVER.

SELLER'S failure to deliver Feeder Pigs pursuant to the delivery schedule agreed upon in paragraph "1" hereof shall constitute default. SELLER shall not have either right to any increased deliveries to compensate for its failure to make a specific delivery of Feeder Pigs. BUYER shall have the right to purchase on the open market any of the agreed upon quantity of feeder Pigs which SELLER fails to deliver pursuant to the agreed delivery schedule, and SELLER shall compensate BUYER for the difference between their price that the BUYER would have paid for the agreed quantity, if the delivery had been made, and the actual cost included shipping cost and other expenses of purchasing said pigs, if higher. SELLER has the same rights as BUYER and will invoice Buyer if scheduled feeder pigs are not taken. This amount will be the difference between the open market and the contract price.

9. SELLER warrants that all Feeder Pigs sold by SELLER shall be Grade One Feeder Pigs and shall be free from any and all liens and encumbrances. SELLER further covenants that it will defend title to the Feeder Pigs and that it will defend, indemnify, and hold BUYER harmless from and against any and all loss, damages or expenses on account of any such lien, encumbrances, or other defects in title, and that Feeder pigs are free of each and every of the following defects at the time they are loaded onto TRI COUNTY TRANSPORT's truck (s): SELLER will warrant the health of the pig for a total of 72 hours from loading on trucks. Seller will not be held liable for any health or performance of said pig after the 72 hour period.

- Males which are uncastrated or freshly castrated;
- Ruptures;
- Coughing, thumping, or scouring;
- Lameness, stiffness, malformed joints or observable abscesses;
- Any unhealed wounds or being freshly cut;
- Prolapsed;
- No pig in the lot will weigh less than thirty-five (35) pounds.

- C. SELLER warrants that the Feeder Pigs will be in merchantable condition upon loading onto TRI COUNTY TRANSPORT's truck(s). Any non-qualifying pigs arriving at BUYER'S destination will be adjusted according to the NON-QUALIFIED AND SUSPECT PIG DESCRIPTION & PRICE ADJUSTMENT SCHEDULE attached hereto as EXHIBIT "A", said attachment becoming a part of this AGREEMENT.
- D. SELLER agrees to use a genetic program capable of producing lean hogs that consistently meet requirements for the duration of this contract. Failure to comply with this provision shall constitute a breach under this agreement. Seller however has no control of packer base price, in case of change seller will work as quickly as possible to improve his genetics.

10. SELLERS PROTOCOL FOR FEEDER PIGS.

SELLER agrees to implement and maintain a Bio-Security Protocol, which shall include but not be limited to:

- A. SELLER'S nursery personnel shall have no other pork production duties except for the care of the Nursery operation.
- B. There will be no other pork production on the premises.
- C. SELLER will inspect Feeder Pigs prior to and at loading upon TRI COUNTY TRANSPORT's truck(s).
- D. SELLER warrants that all contract producers are at Level III of the Pork Quality Assurance Program, or will obtain Level III of such Program by January 1, 1999.
- E. Depending on the destination, environment, or factors, BUYER may request vaccination prior to shipping, which SELLER will assist in fulfilling the request at BUYER'S expense.

11. HOLD HARMLESS/INDEMNIFICATION.

Each Party hereto agrees to defend, indemnify and hold harmless the other, its employees, agents, and assigns, from and against all claims, actions, demands, damages and expenses including reasonable attorney fees, arising out of the party's performance or failure to perform hereunder, except to the extent caused by negligence or willful misconduct of the other

12. BREACH AND REMEDIES:

If any party shall fail to observe or perform any covenant of agreement contained herein or if any representation or warranty given by any of them in connection herewith proves to be false or misleading, the affected, non-breaching party shall give the breaching party written notice thereof, and if the breaching party has not cured within thirty (30) days of such notice (or such longer period required by law) the affected non-breaching party shall have the right to pursue any and all remedies it may have at law or equity, including but not limited to terminating this Agreement. The election of one remedy shall not foreclose the use of another remedy by the affected non-breaching Party and remedies shall be considered cumulative and not exclusive.

13. FORCE MAJEURE:

Either Party to this Agreement shall be relieved of their responsibility's and obligations hereunder when performance becomes commercially impossible because of reasons beyond their reasonable control such as but not limited to fire, explosion, government regulation, or intervention or Acts of God.

14. GOVERNING LAW:

The validity, interpretation, and performance of this Agreement, or any dispute arising thereunder, shall be governed and construed in accordance with the laws of the State of MINNESOTA. If any provision of this Agreement is determined to be invalid or unenforceable, or if the parties hereto mutually agree in writing to any revision of this Agreement, the remainder of this Agreement shall not be affected, and this Agreement shall otherwise remain in full force and effect.

15. ASSIGNMENT:

This Agreement may not be assigned by any Party without prior written consent of the other Party. This Agreement shall be binding upon and insure to the benefit of the party's hereto and there respective successors and permitted assigns.

16. NOTICES:

All notices required under this Agreement shall be deemed to be properly served if delivered in writing personally or sent by certified mail to the other Party at the address stated herein.

17. COMPLETE AGREEMENT:

- A. IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. EITHER PARTY MAY CHANGE THE TERMS OF THIS AGREEMENT BY ANOTHER WRITTEN AGREEMENT.
- B. THIS AGREEMENT CONSTITUTES A FULL UNDERSTANDING OF THE PARTIES, THE COMPLETE ALLOCATION OF THE DUTIES AND RISKS BETWEEN THEM, AND THE COMPLETE STATEMENT OF THE TERMS AND CONDITIONS OF THEIR AGREEMENT RELATING TO THIS PROGRAM. THIS AGREEMENT SUPERSEDES ANY AND ALL PRIOR AGREEMENTS BETWEEN TRI COUNTY MARKETING, WHETHER WRITTEN OR ORAL. NO MODIFICATION HEREOF SHALL BE EFFECTIVE UNLESS IT IS IN WRITING AND SIGNED BY BOTH PARTIES.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their duly authorized representative on the date first above written.

BUYER _____

BY: _____

ITS _____

DATE _____

SELLER _____

BY: _____

ITS _____

DATE _____

EXHIBIT A

NON-QUALIFIED AND SUSPECT PIG DESCRIPTION & PRICE AJUSTMENT SCHEDULE

All adjustments will be made by a representative of TRI COUNTY TRANSPORT or a qualified, licensed veterinarian.

Boars.....A \$15.00 credit will be given to the finisher at the time of delivery

Ruptures.....A full credit will be applied.

Lame.....A full credit will be applied if a pig comes of the Truck lame or crippled

Light pigs.....A 50% credit will be applied for pigs under 35 lb.

Deformed or humpback.....A full credit will be applied.

In Addition.....Atrophic Rhinitis, Extreme Coughing or Thumping, Scouring, Unthriftiness, Observable Abscesses, Lameness or Stiffness as evidenced by Swollen Joints, Undocked Tail, observable Lice or Mange all receive Full Credit.